



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Terry A. and Irene T. Martell
456 Brackett Road
Sanbornville, NH 03872

RE:Septic System Approval #CA2003053414
Wakefield, New Hampshire

**NOTICE OF PROPOSED
LICENSE ACTION
No. 04-001**

March 9, 2004

I. INTRODUCTION

This Notice of Proposed License Action is issued by the Department of Environmental Services, Water Division ("DES") to Terry A. and Irene T. Martell, pursuant to RSA 541-A:30, RSA 485-A:35,I and RSA 485-A:36,I. DES is proposing to revoke the septic system approval, CA2003053414, issued to Terry A. and Irene T. Martell on June 17, 2003, based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Terry A. and Irene Martell are individuals having a mailing address of 456 Brackett Road, Sanbornville, NH 03872.

III. SUMMARY OF FACTS AND LAW SUPPORTING PROPOSED ACTION

1. RSA 485-A:29-44 authorizes DES to regulate the subdivision of land and the construction, maintenance, and repair/replacement of individual sewage disposal systems ("septic systems").
2. RSA 485-A:41 authorizes DES to adopt rules to implement the subsurface sewage disposal system program. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 1000.
3. Pursuant to Env-Ws 1004.19 (b) "If, after the issuance of an approval, the department receives information that indicates that the information upon which the approval was based was not true and complete or was misleading, the department shall notify the permittee of the date, time and place of a hearing at which the permittee shall be given an opportunity to show cause why the approval should not be revoked, which notice and hearing shall be in accordance with RSA 541-A:31."
4. Terry A. and Irene T. Martell, through separate Revocable Trusts, are owners of property located on Brackett Road, Wakefield, New Hampshire, more specifically identified on Town of Wakefield Tax Map 20 as Lot 38, by quit claim deed dated November 14, 1997, recorded in the Carroll County Registry of Deeds at Book 1723, Page 827 ("the Property").

5. On June 17, 2003, DES issued Subsurface Sewage System Approval CA2003053414 (“the Permit”) to Terry A. and Irene T. Martell, to allow them to install a subsurface sewage disposal system on the Property.
6. RSA 485-A:29, I requires that all septic systems shall be installed in strict accordance with approved plans.
7. Env-Ws 1004.19(a) states that approvals issued by DES shall be issued based on the presumption that the information submitted as part of the application is true, complete and not misleading.
8. On June 3, 2003, Mr. Martell submitted a septic system plan for the Property. DES approved the design, following receipt of additional information on a sewer easement granted to the Martells by Matthew and Julie Currier, on June 17, 2003.
9. On October 2, 2003, DES received a letter from George W. Walker, Esq., representing Mr. Edward Johnson, the owner of property on Brackett Road in Wakefield. The complaint alleged that Mr. Johnson was the owner of record of the property over which the sewer easement on the approved plan runs, not the Curriers.
10. On January 7, 2004, DES received from Attorney Walker a copy of the deed showing that ownership of the property over which the sewer easement purported to run rests with Mr. Johnson.
11. On January 7, 2004, DES received a copy of an Order from the Carroll County Superior Court enjoining the Martells from installing a sewer pipe in the right-of-way over the Johnson property. The Court found that the right-of-way existing over the Johnson land was for passage only, and that no sewer pipe could be placed beneath that right of passage. (Order in Docket #03-E-128, issued by the Carroll County Superior Court, December 16, 2003, James D. O’Neill, Presiding Justice)

IV. VIOLATIONS ALLEGED AND PROPOSED ACTION

1. Mr. Martell was issued Septic System Approval CA2003053414 by DES based on information that is untrue, incomplete, or misleading. Based on these violations, DES proposes to revoke the Permit issued to Mr. Martell.

VI. HEARING, REQUIRED RESPONSE

The Martells have the right to a hearing to contest these allegations before the proposed license action is taken. A hearing on this matter has been scheduled for **Monday, June 14, 2004**, at **2:30 p.m.** in **Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, the Martells are required to respond to this notice.** Please respond **no later than May 14, 2004**, using the enclosed colored form as follows:

1. If the Martells plan to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If the Martells choose to waive the hearing, please sign the waiver (lower portion) and return it to the DES Legal Unit. If the Martells waive the hearing, DES is prepared to revoke the Permit.
3. RSA 541-A:31, III(e) provides that the Martells have the right to have an attorney present to represent the Martells at the Martells' expense. If the Martells choose to be represented by an attorney, the attorney must file an appearance and submit proposed findings of fact to the person conducting the hearing.
4. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which the Martells and any witnesses the Martells may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross examination.
5. **If the Martells wish to have a hearing but are unable to attend as scheduled, the Martells must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If the Martells do not notify the DES Legal Unit in advance and do not attend the hearing, the hearing will be conducted in the Martells' absence in accordance with Env C 204.09.**
6. If the Permit is an occupational license, under RSA 541-A:31, III(f), the Martells have the right to request DES to provide a certified shorthand court reporter at the Martells' expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

Anyone having questions regarding this matter should contact Richard J. de Seve, Compliance Supervisor, at 271-3442.

COPY

Harry T. Stewart, P.E., Director
Water Division

cc: Mark Harbaugh, DES Legal Unit
Michael J. Walls, Assistant Commissioner, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Richard J. de Seve, DES Water Division
Public Information Officer, DES PIP Office
George W. Walker, Esq.
Board of Selectmen, Town of Wakefield

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**TERRY A. and IRENE T. MARTELL IS REQUIRED BY LAW TO
RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN MAY 14, 2004

APPEARANCE On behalf of Terry A. and Irene T. Martell.

_____ I will attend the hearing scheduled for Monday, June 14, 2004 at 2:30 p.m in Room
C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

WAIVER OF HEARING On behalf of Terry A. and Irene T. Martell.

_____ I certify that I understand my right to a hearing regarding the imposition of the proposed
administrative fine and that I hereby waive those rights.

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

RETURN THIS PAGE ONLY TO:

Michael Sclafani, Legal Assistant

Department of Environmental Services ~ Legal Unit

6 Hazen Drive, P.O. Box 95

Concord, NH 03302-0095